

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1086
Tuesday, January 22, 2013, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke, Chair Snyder Tidwell, Secretary Van De Wiele White, Vice Chair		Miller Back Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, January 17, 2013, at 3:21 p.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Chair Henke called the meeting to order at 1:00 p.m.

Ms. Back read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **TIDWELL**, the Board voted 3-0-2 (Henke, Tidwell, White "aye"; no "nays"; Snyder, Van De Wiele "abstained"; none absent) to **APPROVE** the **Minutes** of the January 8, 2013 Board of Adjustment meeting (No. 1085).

UNFINISHED BUSINESS

21513—Bailey Austin

Action Requested:

Minor Special Exception to reduce the front setback from 35 feet to 30 feet (Section 403); Variance of the required side yard setback from 35 feet to 25 feet (Section 403.A, Table 3). **LOCATION:** 2248 East 25th Street South **(CD 4)**

Presentation:

No presentation was made. The applicant has requested a continuance to correct the original relief that was requested.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION of WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **CONTINUE** the request for a **Minor Special Exception** to reduce the front setback from 35 feet to 30 feet (Section 403); **Variance** of the required side yard setback from 35 feet to 25 feet (Section 403.A, Table 3) to the Board of Adjustment meeting on February 12, 2013; for the following property:

ALL LT-1-E.45-LT-2-BLK-5, WILDWOOD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21524—QuikTrip – Joe Kim

Action Requested:

Variance of the maximum height of a business sign from 40 feet to 60 feet in the CH district (Section 1221.E.1); **Variance** of the setback from centerline of an abutting street (Southwest Boulevard) from 85 feet to 73.2 feet (Section 1221.C.5 and Section 1221.E.1). **LOCATION:** SE/c of West 23rd Street South and Southwest Boulevard (**CD 2**)

Presentation:

Pam Friggel, 4705 South 129th East Avenue, Tulsa, OK; stated this is actually a variance request for a ten foot difference in sign height versus the 20 foot difference that was requested. Staff informed Ms. Friggel that the sign is actually 50 feet in height so only ten feet is needed. There is a 100 foot McDonald's sign across the street from the proposed QuikTrip sign, and their sign is very visible from the freeway. QuikTrip is requesting the same consideration as far as visibility for the proposed sign from Southwest Boulevard and Highway 75. QuikTrip is requesting a variance on the setback due to site constraints. There is an existing drive that QuikTrip is attempting to tie into with the OSU Medical Center. By doing so there is pavement where the proposed would need to be at 85 feet.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Variance** of the maximum height of a business sign from 40 feet to 60 feet in the CH district (Section 1221.E.1); **Variance** of the setback from centerline of an abutting street (Southwest Boulevard) from 85 feet to 73.2 feet (Section 1221.C.5 and Section 1221.E.1). This approval will be subject to conceptual plan on 3.12, 3.13, and 3.14. Finding that the height variance is actually an increase of ten feet instead of 20 feet, because 50 feet is the allowable height at that point. Also there are other signs in the immediate area that are of a significantly greater height. The setback is required because of a mutual access drive between the subject property and the property immediately to the south. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variances to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

A TRACT OF LAND THAT IS PART OF BLOCK 45 OF THE AMENDED PLAT OF WEST TULSA ADDITION, AND A PART OF BLOCK VIII OF RIVERVIEW PARK ADDITION, AND A PART OF BLOCK VIII OF THE REPLAT OF A PORTION OF BLOCK VIII RIVERVIEW PARK ADDITION, ALL BEING ADDITIONS TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLATS THEREOF, SAID TRACT OF LAND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF BLOCK VIII, REPLAT OF A PORTION OF BLOCK VIII RIVERVIEW PARK ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT NO. 3338 THEREOF; THENCE SOUTH 88°56'18" WEST ALONG THE NORTHERLY LINE OF SAID BLOCK VIII FOR 282.00 FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND; THENCE SOUTH 01°08'42" EAST FOR 240.00 FEET; THENCE SOUTH 88°56'18" WEST FOR 360.00 FEET TO A POINT ON THE WESTERLY LINE OF SAID BLOCK VIII; THENCE NORTH 01°08'42" WEST ALONG SAID WESTERLY LINE, AND ALONG A NORTHERLY EXTENSION THEREOF, FOR 214.96 FEET TO A POINT OF CURVE; THENCE NORTHEASTERLY ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°05'00", A CHORD BEARING OF NORTH 43°53'48" EAST, A CHORD DISTANCE OF 35.38 FEET, FOR AN ARC LENGTH OF 39.31 FEET; THENCE NORTH 88°56'18" EAST ALONG A WESTERLY EXTENSION OF THE NORTHERLY LINE OF SAID BLOCK VIII, AND ALONG SAID NORTHERLY LINE, FOR 334.96

FEET TO THE POINT OF BEGINNING OF SAID TRACT OF LAND. CONTAINING 86,265 SQUARE FEET OR 1.980 ACRES, MORE OR LESS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

NEW BUSINESS

21525—BST of Tulsa – David Laudenklos

Action Requested:

Variance of the landscape requirement to eliminate the required landscape island and trees on the north (rear) of the property (Section 1002.B.1 and C.2).
LOCATION: 4333 South 86th Avenue East (CD 7)

Presentation:

James Campbell, Architect, 1216 East Kenosha, #143, Broken Arrow, OK; no presentation was made, but the architect was available for any questions.

Mr. Van De Wiele asked Mr. Campbell exactly where the subject landscaping is on the property. Mr. Campbell stated that the subject landscaping is located in the rear of the building where there is a railroad spur located and forklifts are being driven.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Variance of the landscape requirement to eliminate the required landscape island and trees on the north (rear) of the property (Section 1002.B.1 and C.2). This approval will be subject to conceptual plan 4.8. Finding that the area where the landscaping is required is a heavily industrialized use and will be truck traffic with other heavy traffic in the area which would make it difficult to maintain the landscaping. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

Lots 23, 24 & 25, Block 1 and Lot 22, Block 2 Memorial Industrial Park, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21526—DCK Properties – David E. Kelly

Action Requested:

Special Exception to allow a carport in the required front yard setback (Section 210.B.10.g); Variance from the maximum allowed carport size from 20'-0" x 20'-0" to 12'-0" x 24'-0" (Section 210.B.10.a); Variance of required side yard setback from 5 feet to 4.5 feet (Section 210.B.10.b); Variance of maximum height from 10'-0" to 12'-8" at the highest point of interior ceiling (Section 210.B.10.d). **LOCATION:** 968 East 36th Street South (CD 9)

Presentation:

David Kelly, 502 East Winston Circle, Broken Arrow, OK; no presentation was made, but the applicant was available for any questions.

Mr. Henke asked Mr. Kelly where the overhang of the carport was located. Mr. Kelly stated it was on the west side of the driveway and lines up with the side of the garage located in the rear.

Mr. White asked Mr. Kelly how old the property was. Mr. Kelly stated that it was built in 1949.

Ms. Snyder asked Mr. Kelly why he is requesting 24 feet in length. Mr. Kelly stated that the proposed carport is 12 feet wide to accommodate one car and the length is to accommodate a longer truck of today, i.e., a truck with four doors and an eight foot bed is approximately 20 feet long. The carport will actually be slightly wider than the driveway.

Ms. Snyder asked Mr. Kelly if he planned on installing concrete for the overage of the carport. Mr. Kelly stated that the driveway is concrete but to the east side of the driveway there is an area approximately eight feet wide that is cover in chat. Mr. White stated that by code, the chatted area must be paved if there is going to be a vehicle parked on it.

Mr. Henke asked Mr. Kelly if he owned the house. Mr. Kelly stated that he does own the house.

Mr. White asked Mr. Kelly to explain his hardship for the height of the carport. Mr. Kelly stated that he wanted to make the carport the pitch as the house roof and the garage roof, because they both have the same pitch even though the width is a little different.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Special Exception** to allow a carport in the required front yard setback (Section 210.B.10.g); **Variance** from the maximum allowed carport size from 20'-0" x 20'-0" to 12'-0" x 24'-0" (Section 210.B.10.a); **Variance** of required side yard setback from 5 feet to 4.5 feet (Section 210.B.10.b); **Variance** of maximum height from 10'-0" to 12'-8" at the highest point of interior ceiling (Section 210.B.10.d). This approval will be subject to conceptual plan 5.9 for the location, and per plan on 5.11 for the structure. Finding for the variances on the carport size, that the width is actually less than the maximum allowed but the length is four feet longer to accommodate today's longer vehicles. The side yard setback of five feet to 4.5 feet, the 4.5 feet is the side yard on the garage built in the 1940s and is nonconforming, and this is merely an extension of that line. This will not be any additional encroachment in that particular side yard, and the fact that the proposed carport still sits behind the front line of the adjacent houses. The maximum height variance from 10'-0" to 12'-8" is for the architectural consideration of matching the pitch of the roof of the house and garage so they will be in conformance. The Board finds that the special exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variances to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

LT 4 BK 2, PEORIA PARK ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21527—Will Wilkins

Action Requested:

Verification of the spacing requirement of 300 ft from a public park, school, or church for an Adult Entertainment Establishment (Bar) in the CBD District (Section 1212a.C.3.b). **LOCATION:** 114 North Boston Avenue East (**CD 4**)

Presentation:

The applicant was not present. Mr. Henke stated that the Board is in receipt of the applicant's survey.

Mr. Henke asked Ms. Back to address the proximity of the Guthrie Green and the Gilcrease Museum Center to the proposed adult entertainment establishment. Ms. Back stated that she has spoken to the City Parks Department and to the Permitting Department. Both departments concur that Guthrie Green is not considered a City of Tulsa public park maintained by the City of Tulsa, or recognized in the City inventory. It is not a City of Tulsa public park. Ms. Back stated that the Gilcrease Museum and the TU Zero Art Center falls in the same realm.

Mr. Henke asked about the school in the area, it is a private school. Mr. Swiney stated that the school restriction is for mandatory public education, the education required by law, rather than an art school.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) the Board moves that based upon the facts in this matter as they presently exist, we **ACCEPT** the applicant's verification of spacing for the proposed adult entertainment establishment subject to the action of the Board being void should another adult entertainment establishment or other conflicting use be established prior to this adult entertainment establishment; for the following property:

S50 LT 1 N50 LT 2 BLK 41, TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21528—Lou Reynolds

Action Requested:

Special Exception to modify screening requirements along western edge of the property on South Urbana Avenue (Section 1608.A.6); Variance from the number of signs allowed per street frontage from 2 to 5 (Section 602.B.4.b); Variance from maximum allowed total Display Surface Area from 137 square feet to 514.5 square feet (Section 602.B.4.c); Variance from maximum allowed Display Surface Area for two wall signs from 150 square feet to 187 square feet (Section 602.B.4.c).

LOCATION: 6060 American Plaza (Formerly known as: 6011 South Urbana Avenue East) **(CD 9)**

Mr. Henke recused himself and left the meeting at 1:30 p.m.

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated he is representing American Bank. What is before the Board today are some of the final details on an exciting project. All of the property on the north half of the subject property on the north side of the building is surface parking, and is adjacent to and faces the back yards of the residences of the area. The driveway will exit at the back of the first house of the neighborhood. All of the project that is north of the office building there is a two-story parking structure, with the first level almost underground. The first level is over three feet deep underground. The office building is 84,500 square feet, eight stories tall, and is the headquarters office building for American Bank. The building is a multi-tenant structure. Mr. Reynolds presented a series of pictures on the overhead screen to the Board depicting how the parking structure will look with the building with the proposed landscaping and signs. Mr. Reynolds stated the application was originally filed asking for 514.5 square feet of signage and the package provided to the Board has a total of 453.0 square feet of signage, showing a reduction of 61.5 feet. The hardship for the signage variance is that the bank is located in a regional center. The Comprehensive Plan calls for mid-rise developments, mixed use developments, or large scale employment, retail uses. The bank is an eight-story building that is 84,500 square feet, a multi-tenant facility and is the headquarters for American Bank. The banking use includes a drive-in facility and that is a quasi commercial use. The structured parking is very unique because it saves land and presents a pleasing project. The code does not contemplate the hybrid uses of offices and shopping centers to have this type of commercial activity in office buildings.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-1 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; Henke "abstaining"; none absent) to **APPROVE** the request for a Special Exception to modify screening requirements along western edge of the property on South Urbana Avenue (Section 1608.A.6); Variance from the number of signs allowed per street frontage from 2 to 5 (Section 602.B.4.b); Variance from maximum allowed total Display Surface Area from 137 square feet to 453.0 square feet (Section 602.B.4.c); Variance from maximum allowed Display Surface Area for two wall signs from 150 square feet to 187 square feet (Section 602.B.4.c). This approval is subject to conceptual screening plan submitted today, January 22, 2013. This is approval is also subject to per signage plan submitted today, January 22, 2013. Finding that the parking facility structure portion, which is constructed below grade and the wall

on the upper level of the parking garage along with the other elements in the screening plan will provide sufficient screening to satisfy the requirements of the code. This large mixed use property with the signage requirements are necessary for identification and directional purposes. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variances to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

Beginning at the Southwest Corner (SW/C) of Lot One (1), Block One (1), HOLIDAY HILLS CENTER ADDITION, a Resubdivision of "Reserve A", HOLIDAY HILLS ADDITION, Tulsa County, State of Oklahoma, according to the recorded Plat thereof; thence N 2°38'20" W along the west line of said Lot One (1) a distance of 447.36 feet to a point; thence due East a distance of 243.68 feet to a point; thence S 1°43'01" E a distance of 447.10 feet to a point on the south line of said Lot One (1) a distance of 236.48 feet to the POINT OF BEGINNING, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Henke re-entered the meeting at 1:47 p.m.

21529 – Kerry Fielding

Action Requested:

Variance to allow three wall signs in an RS-3 district (Section 402.B.4). **LOCATION:**
5345 South Peoria Avenue East (CD 9)

Presentation:

Kerry Fielding, 399700 West 3100 Road, Ramona, OK; stated he represents Spirit Life Church. The church changed their name and there are existing signs on three walls that need to be changed to reflect the new name. The signs will remain in their current locations.

Interested Parties:

Tommy McLorin, Executive Pastor, 507 West 119th Street, Jenks, OK; stated he wanted to let the Board know that he was available for any questions they may have.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a **Variance** to allow three wall signs in an RS-3 district (Section 402.B.4). This approval is subject to conceptual plans on 8.9, 8.11 and 8.13. This approval is also subject to conceptual plan on 8.8 for the locations, being where the existing signs are and the new signs will replace them in the same location. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

S/2 NW SW NW LESS BEG NWC THEREOF TH S330 E660 N330 W25 S305 W585 N305 W50 POB FOR ST SEC 31 19 13 4.096ACS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21531—Executive Homes

Action Requested:

Variance of the lot-width from 100 feet to 65 feet; **Variance** of lot-area from 13,500 square feet and land area from 16,000 square feet to 9,022 square feet to allow a for a lot-split on a RS-1 property (Section 403). **LOCATION:** 1735 East 31st Street South (CD 4)

Presentation:

Ron Cates, Attorney, 601 South Boulder, Suite 400, Tulsa, OK; stated he represents Executive Homes and they have a desire to develop the subject lot for single family residential purposes. Due to the size of the lot and the surrounding uses, many of which being smaller lots, the commercial practicability of the development of one single family residence on this lot is unlikely. In order to develop the subject property it will be necessary to obtain a lot split, and in order to obtain a lot split the requested variances are needed. This is not so much to obtain economic advantage as development ability. The lot presently, the size and the price associated with it, would dictate the placement of a \$2 million structure on the property which would be inconsistent with the surrounding uses. The developmental patterns indicate the requested relief of a lot split would not be inconsistent with the area. He does not believe the lot split would be injurious to the surrounding uses because there is a RS-1 and a RS-2 zones. If the Board approves the variance requests today and a lot split is obtained, one lot would be 65 feet in width and the other lot would be 72.5 feet in width.

Mr. Van De Wiele asked Mr. Cates to explain the difference between financial and commercial practicability. Mr. Cates stated an economic financial advantage would be that one could receive a better price for the subject property. The commercial practicability, or develop ability, as whether or not the subject property would be able to develop. The lot is presently vacant because the house that was on it burned down. The development pattern is that there have been quite a few lot splits in the area. As originally built, perhaps what is being asked for might be inconsistent. However, as the area is developed out he does not believe that it would be inconsistent. Nor does he believe that without the relief granted it is going to develop.

Ms. Snyder asked Mr. Cates if there was a contract of sale on the subject property. Mr. Cates stated that his client does have a contract of sale on the subject property.

Interested Parties:

Jane Faulkenberry, 1824 East 30th Place, Tulsa, OK; stated she has a concern about adding higher density housing to the neighborhood given the RS-1 zoning. She does not see a lot of that happening in the neighborhood. There was a property that had a lot split to the east of the subject property. Her personal view point on this lot split makes her feel as though she has an apartment complex behind her house. The homes goes to the back of the lot lines, and by building two houses on the property they are forced to build out the entire lot. She has a concern of that happening all along 31st Street and it is not consistent with the zoning. As for the economic aspect, she does not know why a house could not be built on the subject property just as the lot is unless the seller is asking for too much money. A lot split and allowing two homes will have an impact on the surrounding neighborhood.

Stephen Daugherty, 1720 East 30th Place, Tulsa, OK; stated he lives two houses away from the subject property. The consistency of the area is one house on a large lot. When the lot is split it creates traffic problems and it will damage the values of the homes in the area. It will not be a proper and consistent look for the area. He purchased his house in that area because of the neighborhood appearances. He has spent a lot of money on remodeling the house. A lot split will be injurious to the neighborhood and take away from his investment.

Rebuttal:

Mr. Cates came forward and stated that he has not had an occasion to visit with Ms. Faulkenberry or Mr. Daugherty. He understands the interested parties comments in part, but he thinks the observations about splitting the lot are inconsistent with what is happening along 31st Street, from Yorktown to Utica. In the staff report it states there have been modifications made to lots in that area. Everyone would like to have residential estates in the city limits of Tulsa. Residences have evolved along 31st Street and the character of the residential estates is declining. Mr. Cates does not think that the density will increase that significantly; it will increase by virtue of splitting the lot and placement of another house. The price for the lot is great and is under contract for \$250,000.00. With that price it will take about a \$2 million home to be placed on the lot, and a \$2 million home is not going to be built on that site on 31st Street. Should the

Board feel that the request does not meet the hardship requirements he can understand.

Comments and Questions:

Mr. Tidwell stated that this same situation happened to him. He lives on a 110 foot lot and right next door the lot was nonconforming with a house built in 1939 on two lots. The house was razed and now he has a house that is 10 feet away from his. He is totally opposed to this request. It would be a disaster for the neighborhood.

Ms. Snyder stated that she is fairly new to the Board, and she has been shocked on the number of cases that come before the Board with no opposition. Because there is opposition to this request she will oppose the request.

Mr. Van De Wiele stated that he thinks this is a financial hardship. He does not know where the calculation of a \$300,000.00 lot warrants a \$2 million home. He does not feel this request meets the requirements for approval.

Mr. White stated the Board has dealt with the issue of infill quite a few times in the past years. While the Board has supported the infill concept there are some areas in Tulsa there are areas that are more suitable for infill, and this area is not one of those areas. A lot split would severely and adversely affect the character of the neighborhood. He cannot support this request.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **DENY** the request for a **Variance** of the lot-width from 100 feet to 65 feet; Variance of lot-area from 13,500 square feet and land area from 16,000 square feet to 9,022 square feet to allow a for a lot-split on a RS-1 property (Section 403); for the following property:

E1/2 OF LT 18 & ALL OF LT 19 & W25 OF LT 20 BLK 18, FOREST HILLS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

21530—Jeremy Perkins

Action Requested:

Special Exception of the maximum height for a fence in the required front yard from 4 feet to 10 feet, and in the other required yards from 8 feet to 14 feet (Section 210.B.3). **LOCATION:** 2635 East 13th Place South, 2639 East 13th Place South (CD 4)

The applicant has withdrawn the application and has requested a refund for \$399.75.

Ms. Back stated the application was submitted on one day and withdrawn the next day with no work being done by the staff.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a **Refund** in the amount of \$399.75; for the following property:

LT-21-BLK-1, LT-22-BLK-1, HURST'S RESUB B5 FAIR ACRES ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

NEW BUSINESS

Request for Reconsideration of BOA-21519 to be heard by the Board of Adjustment on a date to be determined by the applicant. **LOCATION:** 244 West 16th Street (CD 4)

Mr. Van De Wiele recused himself at 2:10 p.m.

Presentation:

Lou Reynolds, 2727 East 21st Street, Tulsa, OK; stated he is representing the applicant. Mr. Reynolds believes there has been a mistake made and he thinks this an opportunity to have it corrected. As the case was being summed up there was a statement made during the motion that the Board of Adjustment goes by the law. Mr. Reynolds fully believes the Board goes by the law. The conversation went on to say that in 2010 the law was changed. The law was not changed in 2010. Mr. Reynolds stated that he thinks there would be support for this request if the Board understood the lawful nature of the use. Mr. Reynolds stated that he does not think the case was presented to the Board properly, and that is why he thinks there should be an opportunity to present the case to the Board in a proper manner. That is what he is before the Board today, asking for, a reconsideration of the case. Under the Roberts Rules of Order, one of the parties that voted for or against the relief needs to make the motion today.

Mr. Henke stated that only one of three of today's Board members can make the motion today, because two were absent at the last meeting where case BOA-21519 was discussed. Mr. Henke asked Mr. Reynolds if there would be new evidence presented if this case were to be reconsidered. Mr. Reynolds stated there would be new evidence,

but this is not the venue for it. Just what was said about the Comprehensive Plan, and the notion regarding Area of Stability and the Area of Growth, that were not properly represented to the Board of Adjustment. The lines that are created by those districts do not separate those neighborhoods. These are neighborhoods and this is a permitted use in that zoning district. The office use is permitted use subject to a special exception, it is not a variance. One of the elements of a variance is that a proposal be consistent with the Comprehensive Plan. The Comprehensive Plan is just a guide it is not the law. The Zoning Code is the law, and that is what is relied on.

Mr. Henke stated that the Comprehensive Plan did not change but the input associated with PlaniTulsa was an indication of a policy change.

Mr. White stated that his comments prior to his motion at the subject meeting he did say that he had approved numerous special exceptions and variances for the businesses in the subject area. It was also stated that the only reason he was making the motion to deny was the fact that the evidence the Board had been given, and there was no contradiction of that evidence on the part of the applicant, that conditions had changed in 2010. Based on that Mr. White stated he made the motion to deny.

Mr. Reynolds stated that is what he wants to show and discuss with the Board of Adjustment, because he does not think that concept was not presented properly.

Mr. Henke asked Mr. White if he would rehear the case. Mr. White answered affirmatively. Mr. Tidwell stated there was such a large neighborhood turnout that was opposed to the application, and he would hate to rehear the case at the possible detriment to the neighborhood.

Mr. Henke stated there was one Board member that stated he had to recuse from the case, and there was another member absent at that meeting. Both sides were given the opportunity to request a continuance and no one wanted to continue the case. Mr. Henke asked Ms. Snyder if she had watched the case on TGOV, or if she was familiar with the case. Ms. Snyder stated that she had not watched the case on TGOV and was not familiar with the case.

Mr. Henke asked Mr. Reynolds if he had filed an appeal. Mr. Reynolds stated that an appeal had been filed as a "Catch 22". Mr. Reynolds stated that the applicant has also filed for additional relief that was not requested in the first case. In the event that all this goes to a denial all of the relief can be before the Court at the same time so that there is not an absurd result with the Court approving the relief then the applicant comes back before the Board with a screening issue or something like that. The case was poorly procedurally before the Board and there are new facts that can be presented and discussed at a new hearing.

Mr. Henke asked Ms. Back if notice were given to the neighbors regarding this request for reconsideration. Ms. Back stated there was no notice given for this as it was presented as a request for reconsideration under Roberts Rules of Order. There was

no time to notify the residents and there is no requirement to notify the residents. The request for reconsideration was carefully worded so that there would be time to advertise and renotice all of the residents within the 300 foot radius of the subject property per code.

Mr. White stated that this reconsideration does not appear on the printed and filed agenda, and that concerns him. Mr. Swiney stated that this reconsideration is considered New Business under the Open Meeting Act.

Board Action:

On **MOTION** of **WHITE**, to reconsider Case BOA-21519 at the meeting of March 12, 2013. The motion died due to a lack of a second.

On **MOTION** of **TIDWELL**, the Board voted 2-1-2 (Henke, Tidwell, "aye"; White "nay"; Snyder, Van De Wiele "abstains"; none absent) to **DENY** the Request for a Reconsideration for Case BOA-21519.

Point of Order, Mr. Swiney stated that the rules stipulate there must three affirmative votes to pass any motion. This had two votes for, one vote against, and one abstention. Mr. Henke stated that this came up in the past, and this is a perfect example of this is not going to receive three votes. Mr. Swiney stated that the vote to reconsider failed, so this last vote was unnecessary. That is the end of the debate of your vote to reconsider. Mr. Henke stated this will give a double resolution.

Mr. Van De Wiele re-entered the meeting at 2:24 p.m.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 2:25 p.m.

Date approved: 2/12/13
Frank X. Henke
Chair